

**REMARKS**

Claims 1-8 and 21-24 are pending in the present application. In the above amendments, claims 23-24 have been amended.

*Applicant respectfully responds to this Office Action.*

***Claim Rejections – 35 USC § 101***

Claims 21-24 have been rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

In the Office Action, the Examiner asserts that claims 21 and 22 encompass software per se by reciting “means for” limitations, which based on the specification includes software elements and no hardware elements (as all means are possibly claimed). See, Office Action, page 2.

Applicants assert that claims 21 and 22 are directed to “an apparatus.” The Examiner fails to provide any support for the assertion that an apparatus has no hardware elements. Further, claims 21 and 22 both recite, for example, “means for providing available software to be loaded into said computing device to update a resident software within said computing device.” Both claims require interaction with a “computing device.” Further, software alone, without any hardware, has no capability to load software into the computing device.

In the Office Action, the Examiner asserts that claims 23 and 24 encompass non-tangible “signal” media (Specification: page 4, lines 20-21), which is non-statutory. Quoting the specification, “in another embodiment, interface 104 comprises a wireless communication system for receiving software over-the-air.” See, Office Action, page 2.

Applicants assert that claims 23 and 24 are not directed non-tangible or transitory signals. Instead, the claims are directed to computer-readable medium, such as storage device 112. Claims to a computer readable medium are statutory. See, MPEP 2106.01, which cites In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Similarly, a claim covering “a signal” is not statutory subject matter, but claims covering a “storage medium” were allowed. See, In re Nuijten, No. 2006-1371 (Fed. Cir. Sept. 20, 2007), fn. 6.

Accordingly, claims 21-24 recite patentable subject matter, and the rejections under 35 U.S.C. §101 should be withdrawn.

***Claim Rejections – 35 USC § 112***

Claims 1, 21 and 23-24 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claims 23 and 24 have been amended to recite “instructions”, and these rejections should be withdrawn.

In the Office Action, the Examiner asserts that claims 1, 21 and 23 omit essential steps pertaining “to the relationship of the authentication flag to the updating method.” See, Office Action, page 3. Applicants note that in claims 1, 21 and 23, the authentication flag is set upon specific conditions, and the updating is performed upon the specific conditions. Thus, as recited in these claims, the updating is not related to the authentication flag, except that the specific conditions are the same. As no essential steps are missing from these claims, Applicants assert that the rejections of claims 1, 21 and 23 under 35 U.S.C. §112, second paragraph, should be withdrawn.

***Claim Rejections – 35 USC § 102***

The Examiner rejected claims 2-3, 5-6, 22 and 24 as being allegedly anticipated by U.S. Patent No. 6,381,741 issued to Shaw. Applicants respectfully traverse this rejection.

Regarding claims 2, 22, and 24, Applicants respectfully submit that the Shaw patent does not disclose “determining whether or not said resident software stored in a storage device associated with said computing device is authenticated,” as now claimed. The Shaw patent discloses checking only for corruption of a software application “as opposed to authenticity.” See, col. 3, lines 40-67, and FIG. 2, block 130. Therefore, since the Shaw patent does not disclose at least the above limitations, Applicants respectfully request the Examiner to withdraw the rejections of independent claims 2, 22, and 24, and of dependent claims 3 and 5-6.

***Claim Rejections – 35 USC § 103***

The Examiner rejected claims 1, 4, 21 and 23 as being allegedly unpatentable over the Shaw patent. Applicants respectfully submit that the Shaw patent does not disclose or suggest

“determining whether or not said resident software stored in a storage device associated with said computing device is authenticated,” as now claimed. The Shaw patent discloses checking only for corruption of a software application “as opposed to authenticity.” *See*, col. 3, lines 40-67, and FIG. 2, block 130. Applicant asserts that the Shaw patent’s teaching of checking only for corruption, and not authenticity, teaches away from determining whether or not the resident software is authenticated. Therefore, since the Shaw patent does not disclose or suggest at least the above limitations, Applicants respectfully request the Examiner to withdraw the rejections of claims 1, 4, 21 and 23.

**REQUEST FOR ALLOWANCE**

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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